Office of the Attorney General
Leonardo M. Rapadas
Attorney General of Guam
Civil Division
287 West O'Brien Drive
Hagåtña, Guam 96910 • USA
(671) 475-3324 • (671) 472-2493 (Fax)
www.guamattorneygeneral.com
Attorneys for the Government of Guam

IN THE DISTRICT COURT OF GUAM
TERRITORY, GUAM

JAMES L. ADKINS, **Plaintiff,** **vs.** PAUL SUBA, etc., et al., **Defendants.**	**CIVIL CASE NO. 09-00029** **ANSWER OF DEFENDANT J. P. RODRIGUEZ TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

Comes Now, the Defendant J. P. Rodriguez, by and through the Attorney General of Guam, and answers plaintiff's second amended complaint for damages as follows:

1. Defendant admits the truth of those allegations contained in paragraph 78 of plaintiff's second amended complaint.

2. Defendant denies the truth of those allegations contained in paragraphs 9, 10, 11, 27, 28, 32, 44, 45, 49, 55, 56, 57, 59, 60, 79, 80, 81, 83, 84, 85, and 87 of plaintiff's second amended complaint.

3. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraphs 5, 7, 8, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 30, 31, 34, 35, 36, 37, 38, 40, 41, 42, 43, 47, 48, 51, 52, 53, 54, 62, 63, 64, 65, 66, 67, 68, 69, 71, 72, 73, 74, 75, and 76 of plaintiff's second amended complaint, and therefore denies those allegations.

4. As to paragraph 1 of plaintiff's second amended complaint, defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in the second sentence of plaintiff's first paragraph, and therefore denies those allegations. Defendant denies all other allegations in this paragraph.

5. As to paragraph 2 of plaintiff's second amended complaint, defendant admits that plaintiff is seeking alleged damages, but denies all other allegations in this paragraph.

6. As to paragraph 3 of plaintiff's second amended complaint, defendant admits this court has subject matter jurisdiction.

7. As to paragraph 4 of plaintiff's second amended complaint, defendant admits that at the present time, this court has supplemental jurisdiction over this defendant.

8. As to paragraph 6 of plaintiff's second amended complaint, defendant admits that Paul Suba was the Chief of the Guam Police Department and that he is sued in his individual capacity. Defendant denies the other allegations contained in this paragraph.

9. As to paragraph 23 of plaintiff's second amended complaint, defendant denies the allegations contained in the first sentence of that paragraph. Defendant lacks knowledge or information sufficient to form a belief about the truth of the other allegations in paragraph 23, and therefore denies those allegations.

10. As to paragraph 24 of plaintiff's second amended complaint, defendant admits the GPD Evidence /Property Custody Sheet, attached as Exhibit D to plaintiff's second amended complaint is a copy of the original. Defendant admits that this document shows that Artui received a cell phone from plaintiff at 1648 hours on October 4, 2009. Defendant lacks knowledge if this was the day of plaintiff's arrest or if plaintiff was arrested at all, and therefore denies those allegations. Defendant admits that Exhibit D indicates Artui placed the cell phone into evidence at 12:04 am on October 4, 2009. Defendant admits that according to Exhibit D the cell phone was placed in an Evidence Box on October 5, 2009. Defendant admits that plaintiff's lawsuit was filed on December 3, 2009, but denies that he knew the lawsuit had been filed on that day as of December 7, 2009. Defendant admits those allegations contained in the fifth through eighth sentences of this paragraph of plaintiff's complaint. Defendant denies all other allegations contained in this paragraph of plaintiff's complaint.

11. As to paragraph 29 of plaintiff's second amended complaint, defendant admits that the statutes referenced by plaintiff in this paragraph are Guam statutes and that plaintiff has accurately quoted portions of those statutes. Defendant denies that such statutes create an actionable duty under Guam law or are relevant to plaintiff's claims.

12. As to paragraph 33 of plaintiff's second amended complaint, defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in the first sentence of that paragraph and therefore denies those allegations. Defendant denies the remaining allegations in that paragraph. Defendant admits or denies those allegations contained in paragraphs 39, 46, 50, 58, 61, 70, 77, 82, and 86 as is consistent with the admissions and denials contained elsewhere in this answer.

13. Defendant denies all other allegations contained in plaintiff's second amended complaint.

BY WAY OF AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES AS FOLLOWS:

14. Defendant has qualified immunity from plaintiff's federal and territorial law claims.

15. Plaintiff has failed to state a claim for which relief can be granted.

16. Plaintiff's claims are barred or must be reduced by the doctrine of comparative negligence.

17. Plaintiff's complaint, and each purported claim for relief against Defendant therein, is barred in whole or in part to the extent that Plaintiff failed to mitigate damages with respect to such claims.

18. Any damage or injury suffered by Plaintiff was occasioned by Plaintiff's own wrongful acts.

19. Defendant alleges that if Plaintiff sustained any of the injuries or damages alleged in the Complaint, such injuries or damages were caused solely by the conduct of Plaintiff or other persons or entities, and not by Defendants.

WHEREFORE, Defendant prays for relief as follows:

1. That judgment be entered in favor of Defendant and against Plaintiff on all causes set forth in Plaintiff's Complaint;

2. That Plaintiff be awarded nothing on his Complaint;

3. That defendant be awarded his reasonable costs incurred herein.

4. That defendant be awarded his reasonable attorney fees under 42 U.S.C. Section 1988.

5. That the Court award such other and further relief as the Court deems just and proper.

Respectfully submitted this 7th day of January, 2011.

OFFICE OF THE ATTORNEY GENERAL
Leonardo M. Rapadas, Attorney General

By: ______________________________
KENNETH ORCUTT
Assistant Attorney General
Attorneys for Defendants

CERTIFICATE OF SERVICE

I, **KENNETH ORCUTT**, Assistant Attorney General of the Office of the Attorney General, hereby certify that on the 7th day of June, 2010, I caused to be served copies of **ANSWER OF DEFENDANT J. P. RODRIGUEZ TO PLAINTIFF'S SECOND AMENDED COMPLAINT** and **CERTIFICATE OF SERVICE** in the above-captioned matter to be served on the office of:

Anita P. Arriola
Arriola, Cowan & Arriola
C&A Professional Bldg.
259 Martyr St., Ste. 201
Hagatna, Guam 96910

Respectfully submitted this 7th day of January, 2011.

OFFICE OF THE ATTORNEY GENERAL
Leonardo M. Rapadas, Attorney General

By: ______________________________
KENNETH ORCUTT
Assistant Attorney General